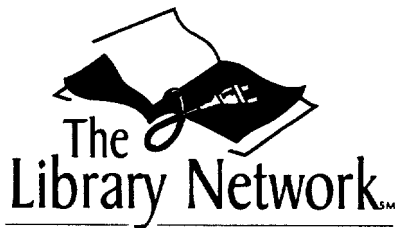


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Connections for the Information Age

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February 12, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: [CC Docket No. 96-45, FCC 01-31] Federal-State Joint Board on Universal Service

Dear Ms. Salas:


The following comments from The Library Network (TLN), one of Michigan's 14 public library cooperatives, relate to the FCC's Notice of Proposed Rule Making regarding the Children's Internet Protection (CHIP) Act.

1. Defining the "first program funding year" (section 1721(a)(5)(E)(i)(I))

The CHIP Act is to become effective in the "first program funding year" of the E-rate program following enactment of Public Law 106-554 (April 20, 2001). The FCC assumes the first year is the E-Rate's year 4 funding cycle (July 1, 2001-June 30, 2002). We challenge the assumption that program year 4 begins July 1, 2001. An argument can be made that the year 4 funding cycle began with the applicants filing form 470 starting July 1, 2000. Most assuredly the application year began no later than with the filing of 471 applications during the open application window from November through January 18, 2001. Many libraries had already filed both form 470 and form 471 before the CHIP Act was passed. Applicants submitted applications in good faith, based on existing rules, in January 2001. Per FCC requirements they entered into contracts for service based on existing program rules. To change the rules prior to the end of the program year places an undue burden on applicants and, we believe, is contrary to the law. Thus, considering the program funding year began months before passage of this legislation, the first program funding year to which the CHIP Act applies is really year 5 of the E-Rate program (July 1, 2002-June 30, 2003) and not year 4. With year 5 being the first year of the act's implementation, the FCC also avoids the need to have a separate certification process for just the first year.

2. The "disabling during adult use" provision (section 1721(b)(6)(D))

If any rules are needed in this section of the act, they should be written in a manner that gives libraries the necessary flexibility to ensure that legitimate adult use of the Internet is not impeded by unnecessary technical or logistical roadblocks. Specifically for public libraries, any rules should enable a library's "Internet Safety Policy" (section 1731) to be crafted in a manner that allows unfiltered access for adults without always asking staff to turn off the filters. This could be done by the inclusion in the safety policy of a permission statement or sign-off form requesting permanent unfiltered access. Requiring adults always to ask staff to disable the filters is likely to have a chilling effect on adults' Internet use, it is cumbersome and time consuming for the staff to administer, and it may be technologically difficult to implement.

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3. Specific language on certification

Technology protection measures are imperfect at best. As noted in the congressionally sponsored COPA (Child Online Protection Act) Commission report (which recommends against federally mandated filtering), no technology protection measure can provide 100% assurance against retrieval of visual depictions outlawed by this Act. With this in mind, the FCC's suggested certification language ("I certify that the recipient complies with all relevant provisions of the Children's Internet Protection Act ... ") is incomplete and difficult for library boards to sign. We believe libraries must be held harmless if a good faith effort has been made to comply with the CHIP Act. We also believe that the FCC must recognize, within the certification language, the imperfect nature of technology protection measures. We therefore respectfully suggest the FCC consider language like:

I certify that the recipient complies with all relevant provisions of the Children's Internet Protection Act. Such compliance includes the installation of technology protection measures that protect against access to visual depictions referenced in this act. Due to limitations of the technological capabilities of the technology protection measures in place the applicant cannot offer a 100% guarantee that all such visual depictions will be filtered out at all times.

Without such an acknowledgement, library boards, including those of our members, will be unable to certify compliance with CHIP and library users in those communities will be disenfranchised and unable to take advantage of the benefits the E-Rate program brings to their libraries.

4. The E-rate form used to certify status of compliance

The FCC requested comments on plans to use the form 486 as the vehicle to establish compliance in the first year under the CHIP Act and form 471 in subsequent years. We believe that the form 486 is the correct vehicle for establishing compliance, and that to require compliance earlier is questionable under the statute which states in section 1721(5)(a)(ii) that libraries "may not receive services at discount rates" unless they comply. Requiring compliance prior to the form 486 is counter to FCC current policies with regard to technology plan certifications and places an undue burden on libraries and consortia participating in the program. Consortia are especially disadvantaged by this proposal. Time is needed to finalize compliance plans in the first year and to update compliance records in subsequent years. First time applicants (after the first year under the CHIP Act) are also especially disadvantaged by the FCC's proposal. Any compliance language on forms 470, 471, and 486 should replicate the options provided on these forms for other compliance issues. Technology plan compliance requirements are the guideline we believe the FCC should follow.

5. Issues of compliance in consortia applications

For a library consortium to certify compliance, it must be based on a good faith effort to assure its members have complied. We should not be required to guarantee the ongoing compliance of all consortia members. While we understand that we should be required to report instances of non-compliance of which we are aware, we should not be held accountable for instances of non-compliance when proper certification has been provided by a specific library. Further, if a member of a consortium should be found to be in non-compliance, then the loss of discount (or requirements to repay previous discounts) should affect only that single entity and not the entire consortia. To implement rules that do not protect the consortia applicant in this manner will have a chilling effect on consortia applications. Such an effect is contrary to the FCC's goal to foster collaboration and the aggregation of demand.

6. Exceptions

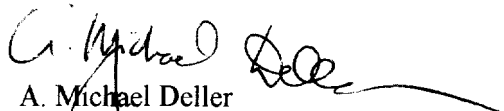
Exceptions to CHIP should be considered for federal depository libraries, since the intent of the legislation is clearly not aimed at them.

TLN has four federal depository libraries within its membership. Depository libraries have a unique and important role in providing access to federally funded information. The CHIP Act requirement that technology protection measures can only be disabled for adults is in direct conflict with the federal government depository library program that states that no age distinctions may be made to people seeking government information. Depository libraries support the very cornerstone of democracy. They have willingly taken on the burden of providing access to more and more electronic documents produced by the federal government. The E-Rate program is essential to allowing them to keep pace with the telecommunications and technology demands of providing unfettered access to government information. Failing to exclude them from compliance requirements will result in fewer federal document depositories or increased economic burdens on those willing to remain in the program. Of course the real result will be in the greater numbers of citizens of *all ages* denied access to information by and about their own government. We strongly urge the FCC to exclude this group of eligible E-Rate recipients from compliance with CHIP. There simply is no way to comply and continue to meet federal document depository library program rules.

We also believe that the FCC should consider exemptions for eligible state and consortia networks where no on-site access to the public is provided. Again, the clear intent of Congress is to provide protection to public users of the Internet when using public libraries.

The Library Network, and the 64 public libraries it represents, appreciates the Commission's review of the issues we have discussed in this filing. We are more than willing to provide the FCC with any additional information it requires as the rules for implementation of CHIP are finalized. Our libraries rely on the funding provided through this program and hope that we will be able to continue to participate in coming years.

Cordially,


A. Michael Deller
Director

cc: The Library Network Board of Trustees
Eileen M. Palmer, Deputy Director